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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (c) No. 2563 of 2007

Petitioner Non-applicant	Smt. Renuka Shukla, W/o. Shri Nelesh Shukla, aged 33 years, r/o. Tikarapara, Ramdas Nagar, Dist. Bilaspur, CG.

Versus

Respondent Applicant	Nelesh Kumar Shukla, s/o. Shri C.L. Shukla, aged 35 years, r/o. Q.No. 18/G, Street no.32, Sector no.4, Bhilai Nagar, District Durg, CG.

(Writ Petition under Article 227 of the Constitution of India)

SB: Hon'ble Shri Justice Satish K. Agnihotri

Present:
Shri Anurag Dayal, counsel for the petitioner

ORAL ORDER
(Passed on 26th April, 2007)

By this petition filed under Article 227 of the Constitution of India, the petitioner questions the legality and validity of the order dated 28-2-2007 (Annexure P/1), wherein the IInd Additional Principal Judge, Family Court, Durg, has allowed the application of the respondent to produce the documents.

2) The facts, in nutshell, are that the respondent filed an application under Section 13 (1) (1A) of the Hindu Marriage Act, 1955 for divorce on the ground of mental cruelty. After recording and closing the evidence of the applicant, the respondent filed an application under Order 7 Rule 14(3) of the Code of Civil Procedure (for short, "the Code") to produce a document namely suicidal note dated 31-5-2002. The learned Judge, after hearing both the parties, dismissed the application vide order dated 9-1-2006 (Annexure P/2).

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3. Being aggrieved, the petition being Writ Petition No.1836/2006 was filed in this Court. This Court vide order dated 30-4-2006 passed in Writ Petition No.1836/2006 dismissed the petition as withdrawn, reserving liberty to the respondent to take appropriate legal steps before the Family Court itself, if he is so advised. The respondent again moved an application under Order 7 Rule 14 (3) of the Code along with document i.e., perpetual suicidal note dated 31-5-2002.

4. Learned Judge, after hearing both the parties, came to the conclusion as under:

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अनावेदिका की ओर से उक्त आवेदन का विरोध किया गया है। आवेदक का तर्क सूनने एवं अभिलेख का परिशीलन करने से ऐसा दर्शित होता है कि ये दस्तावेज पुलिस अनुसंधान में अनावेदिका के आत्महत्या एवं पुत्री की मृत्यु से संबंधित है। इसके साथ ही आवेदक ने हस्तलिपि विशेषज्ञ की रिपोर्ट को भी पेश किया है। उक्त आवेदन पत्र शपथ पत्र द्वारा समर्थित है। आवेदक की ओर से यह बताया गया है कि उक्त दस्तावेज उसे सूचना के अधिकार के तहत् आवेदन करने पर दिनांक 3.1.2007 को प्राप्त हुआ है और इस कारण पूर्व में वह उक्त दस्तावेज प्रस्तुत नहीं कर सका। आवेदक द्वारा यह बताया गया है कि ये दस्तावेज सुसंगत है तथा न्यायालय को निर्णय करने में सहायक होंगे।

आवेदक द्वारा दी गयी दलील से स्पष्ट होता है कि पूर्व में उक्त दस्तावेज उसके कब्जे में नहीं थे और सूचना का अधिकार का प्रयोग करने पर उसे उक्त दस्तावेज हाल ही में प्राप्त हुए है अतः यह आवेदन 500/– (पांच सौ रु.) परिव्यय पर स्वीकार किया जाता है। प्रस्तुत दस्तावेज अभिलेख में लिए जाते है। "

5. After hearing learned counsel for the petitioner, I have gone through the pleadings and documents appended thereto.

6. The leaned Judge has exercised power under Order 7 Rule 14(3) of the Code, wherein it is clearly provided that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to

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be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. Admittedly, the said document could not be produced as the document was not in possession of the respondent and the respondent obtained a coy of the document under provisions of Right to Information Act on 3-1-2007.

7. Thus, for proper adjudication, in the interest of justice, the document was rightly permitted to be produced in the Court. I do not find any infirmity, illegality or jurisdictional error in the impugned judgment/order passed by the Court below.

8. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

9. Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the decision passed by the court below.

10. Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju